

Emerging issues: The impact of the *Clarke* decision
on policing's response to domestic violence

2020 | Biennial Report on Victimization & Victim Services in Idaho, Volume 1, Issue 1

Biennial Reports on Victimization & Victim Services

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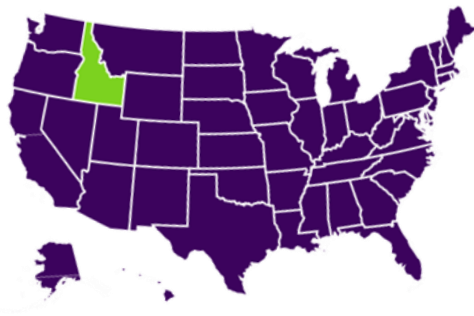
1. Funded through VOCA monies.

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2. Produce a series of reports every two years, including surveys of victims & victim service providers, impact of SAKI, and emerging issues, as well as a clearinghouse website for victimization and victim services in Idaho.

Review



Jun, 2019
Idaho Supreme Court
Ruling

What is the Clarke Decision?

The Clarke decision made it unlawful for police to make an arrest in misdemeanor crimes that happen outside their presence without a signed warrant from a judge. Unfortunately, this also applies to domestic violence-related incidents.

Sample

Characteristic	N agencies	Characteristic	N Agencies
Judicial District	21	Multiple agencies present	6
District 1	4	Other agencies present	9
District 2	2	City attorney	2
District 3	4	Prosecuting attorney	2
District 4	5	Victim-witness unit	3
District 5	3	Other policing agency	1
District 6	2	Community DV services	1
District 7	1		
Agency Type	22		
Police department	11		
Sheriff's office	4		
Statewide agency	1		
Victim witness unit	1		
Community DV services	5		

- 22 interviews included representation from 31 different criminal justice and/or victim services agencies and 94 individuals.
- Average number at interviews=2 but 54.5% of interviews included 3+ people. Interview length=45 minutes to 2 hours.

16 Total Policing Agency Interviews

6 Total Independent Victim Service Agency Interviews

Clarke was a surprise to most agencies

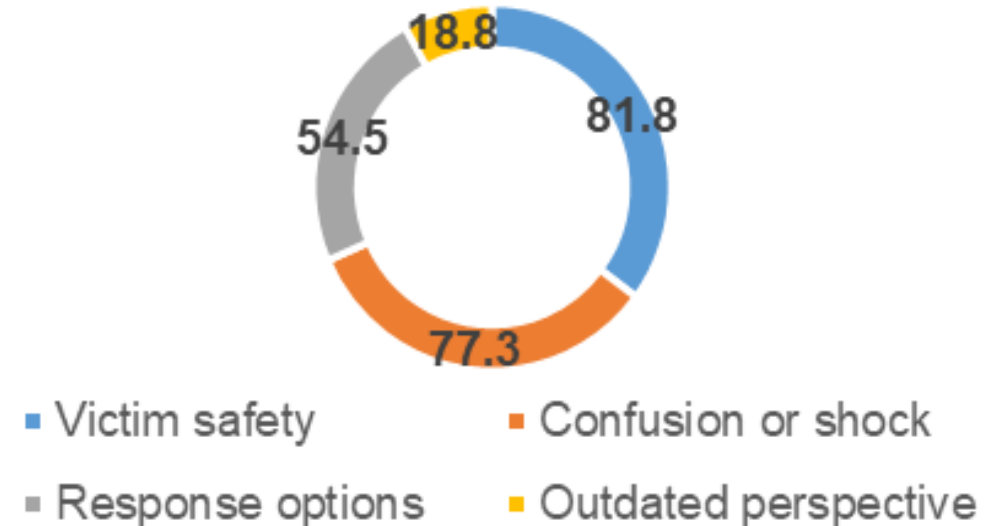
“When it hit, that whole day was crazy [hand gesture of bomb exploding]”

“Made us think they forgot about the victims”;
“This is not going to be helpful for victims”; and
“Huge step back from protecting victims”.

“When I read it, I didn’t believe it. I had to read it 2 or 3 times to fully understand it”; “For other offenses it makes sense, but for DV, it doesn’t”; and “Oh sh*t”.

“Someone is going to get killed because we are losing a tool”.

Immediate Reaction to the
Clarke Decision (%)



DV policies before and after *Clarke*

Policing agencies, then...

‘mandatory policy’, ‘physical arrest’, and ‘compelled to arrest’ were often used as well as ‘must takes’, ‘most cases’, and ‘rare case of no arrest’ OR ‘if probable cause exists’, ‘if enough evidence’ OR ‘everything was officer discretion’, ‘totality of circumstances’

...and now

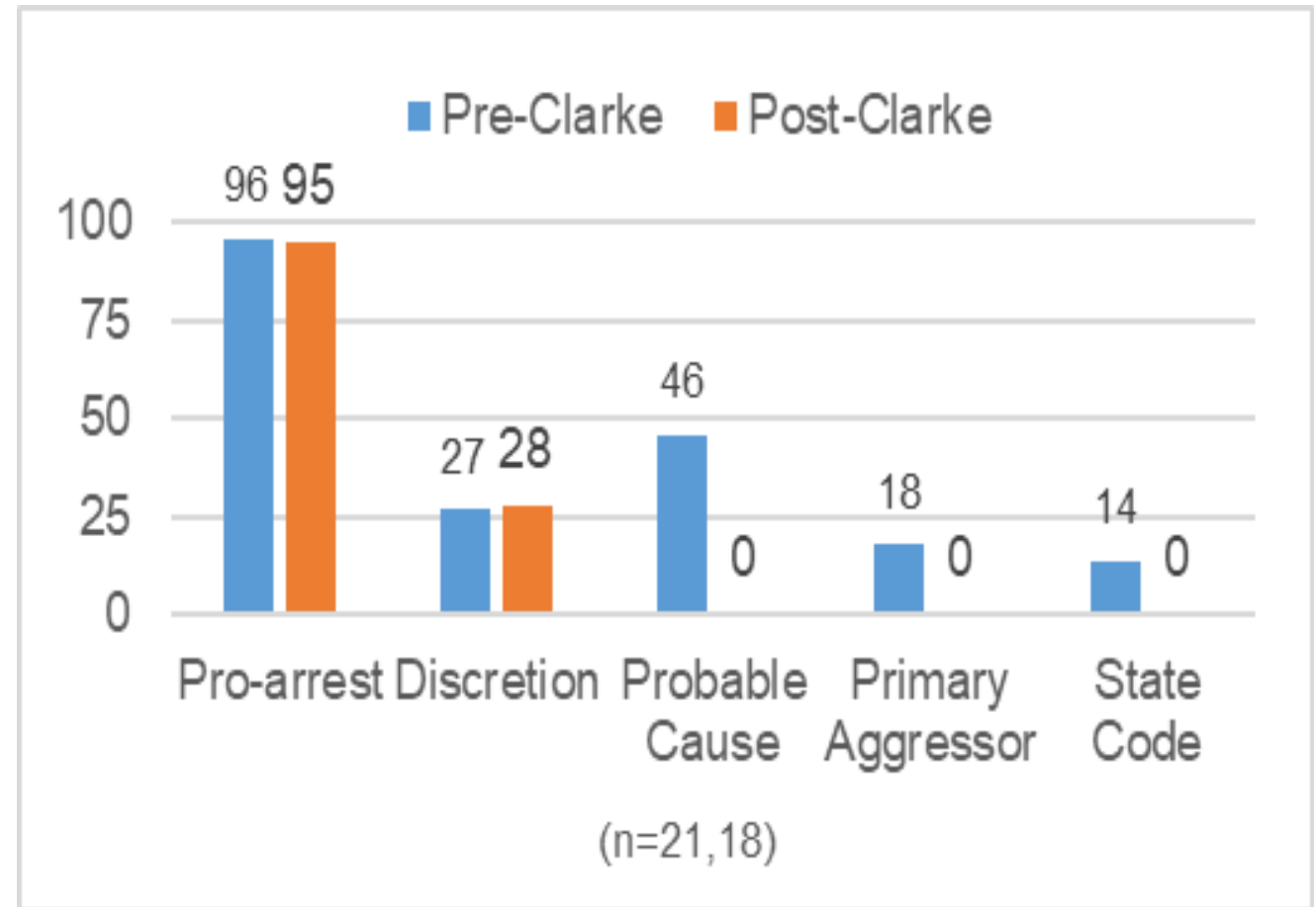
‘We weren’t not going to take them to jail’;
‘Don’t release or make the victim unsafe’
“They want guidance”; ‘Have a couple of options’

Victim Services...then

‘typically arrest’; ‘encourage arrest’ OR ‘big problem with lack of identifying primary aggressor by officers’

...and now

‘No one is getting arrested’



Perceived changes in policing response

83% of victim service agencies mentioned a perceived decrease in arrests for misdemeanor DV compared to 13% of policing agencies...

...as well as a perceived decrease in officers' referrals to victim services (66.7% vs. 0%).

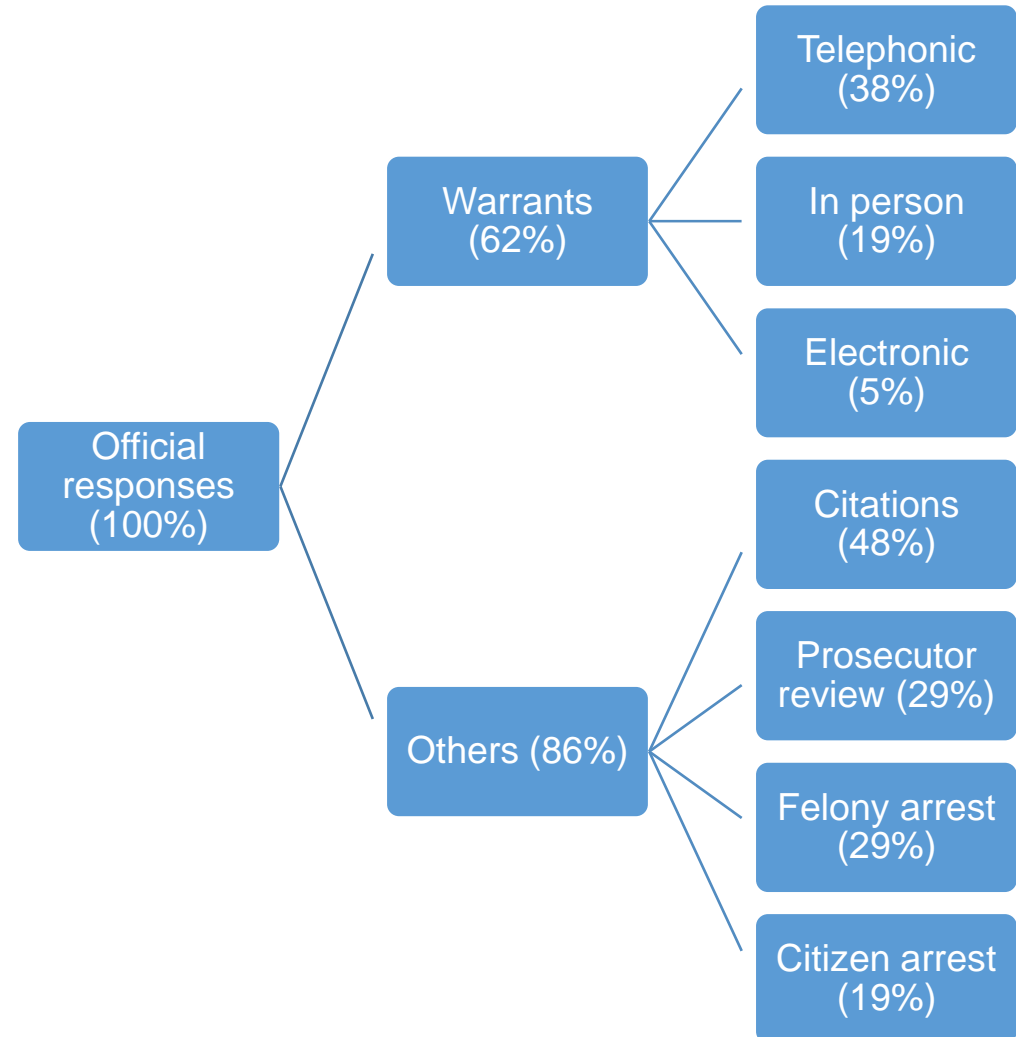
Official Response	% Interviews	Unofficial Response	% Interviews
Increased citations	40.9%	Increased victim services	27.3%
Increased warrants	36.4%	Increased discretion	27.3%
Increased felony arrests	36.4%	Decreased victim services	18.2%
Decreased misd. arrests	31.8%	Increased separation	9.1%
Increased prosecutor review	18.2%		
Increased citizen arrests	13.6%		
Decreased investigations	13.6%		
Decreased arrests	13.3%		
Decreased case follow up	9.1%		

Official forms of policing response

Telephonic warrants: 30% outside of the Treasure Valley compared to 83% in the Treasure Valley

Similarly, none of the victim service agencies mentioned that policing agencies were using this method to effect arrests.

However, they may be unaware of whether a warrant was used to effect the arrest, given that they are not generally on-scene at DV incidents with policing agencies.



Challenges to policing response

Policing agencies

- Victim safety 94%
- Felony arrests 69%
- Incident staffing 63%
- CJS responsiveness 56%
- (-) community perception of policing 50%
- Warrants 50%
- (-) victim perception of policing 44%
- Detention during warrant process 44%
- Officer liability 38%
- Delayed consequence for suspect 38%
- Victim non-cooperation 31%
- Case processing 19%

Victim service agencies

- Victim safety 67%
- CJS responsiveness 67%
- Warrants 50%
- Delayed consequence for suspect 50%
- Victim non-cooperation 50%
- Incident staffing 33%

Commentary on challenges to policing response

Victim safety

“puts people at greater risk”; ‘protection has been taken away from victims’; “Now we are waiting for it to turn more violent”

Delayed consequences for suspect

reported time between citation issued and suspect appearance ranged from 24 hours to 2 months

Felony arrests

‘trying to fit a crime into what’s it’s not’; ‘there are major consequences for people with a felony arrest’

Negative perceptions of policing

“[Handing a citation] implies that we are not taking a decisive action in the interest of public safety.”

CJS responsiveness

‘judge is adamant that he does not want to be woken up after hours’; ‘our prosecutor doesn’t like being called’; ‘had 10 violations by the time he appeared on charges’

Victim services comments

“hurting police-victim relationships”; victims are refusing to call the police again; victims are not protected by a no contact order; left to face the ‘repercussions from the suspect for calling law enforcement’

Victim reactions to policing responses



Suspect reactions to policing responses



Positive outcomes for policing agencies

Officer oriented

- Warrant skills
- Investigation/Report writing
- Adaptability
- Interest in DV training
- Negotiation skills

Process oriented

- Warrant process
- Relationship/Coordination with other CJS
- Relationship/Coordination with victim services

Downstream oriented

- Improved connection to victim services
- Reduce jail overcrowding
- Increased prosecutor prep time

Necessary policing training

Legal Issues: warrant process, traumatic injury, when to arrest, detention issues (63%)

Resources: community-based services, capacity, addressing other issues affecting parties (53%)

Investigative skills: understanding and assessing risk, recognize less obvious trauma, strangulation; reporting writing (37%)

Victimization Knowledge: DV education, effects on victims, victim reactions (32%)

Communication Skills: basic communication, respectful/tactful communication, how to explain decisions to victims and public (26%)

Alternatives to arrest: options for victim safety, reducing further violence until interventions (21%)

Perceived changes to victim services response

Difficulty accessing victims to offer services (89%) "Feel like I am putting the victim in more danger by contacting because the offender is going to ask"

Increase in civil protection order assistance (75%) 'Yes, an increase in civil protection orders and it's now more difficult for them to be protected'

Increased time explaining police response (63%) 'Victims are not getting information from our officers'

Increased safety planning (56%) "Makes safety planning even more important than it was before"

Providers have safety concerns (50%) 'Stopped going to victim's home if suspect isn't arrested'

Decreased referrals (25%) 'Without arrests, we don't get referrals until very late in the court process, months later'

Barriers to victim services

"It's horrifying. They are not going to get a no contact order now"

~Victim-witness coordinator

"With all that's going on for victims to add another level of burden without giving them more help is indescribable"

~Community-based advocate

"Where is the validity of the [civil] protection order now?"

~Community-based advocate

"We don't have the shelter space that the Treasure Valley has."~Police chief

"Only have one victim-witness coordinator in the whole county"~Police chief

Policing agencies w/o victim services present



☐ Not enough victim services staffing

☐ Suspect interference

☐ Lack/Not enough victim services resources

☐ Delayed response to victims

☐ Disproportionately impacting marginalized victims

All victim services agencies present



☐ Increased safety risks for victims*

☐ Suspect interference

☐ Exacerbates existing barriers*

☐ Delayed response to victims

☐ Ineffectiveness of CPOs*

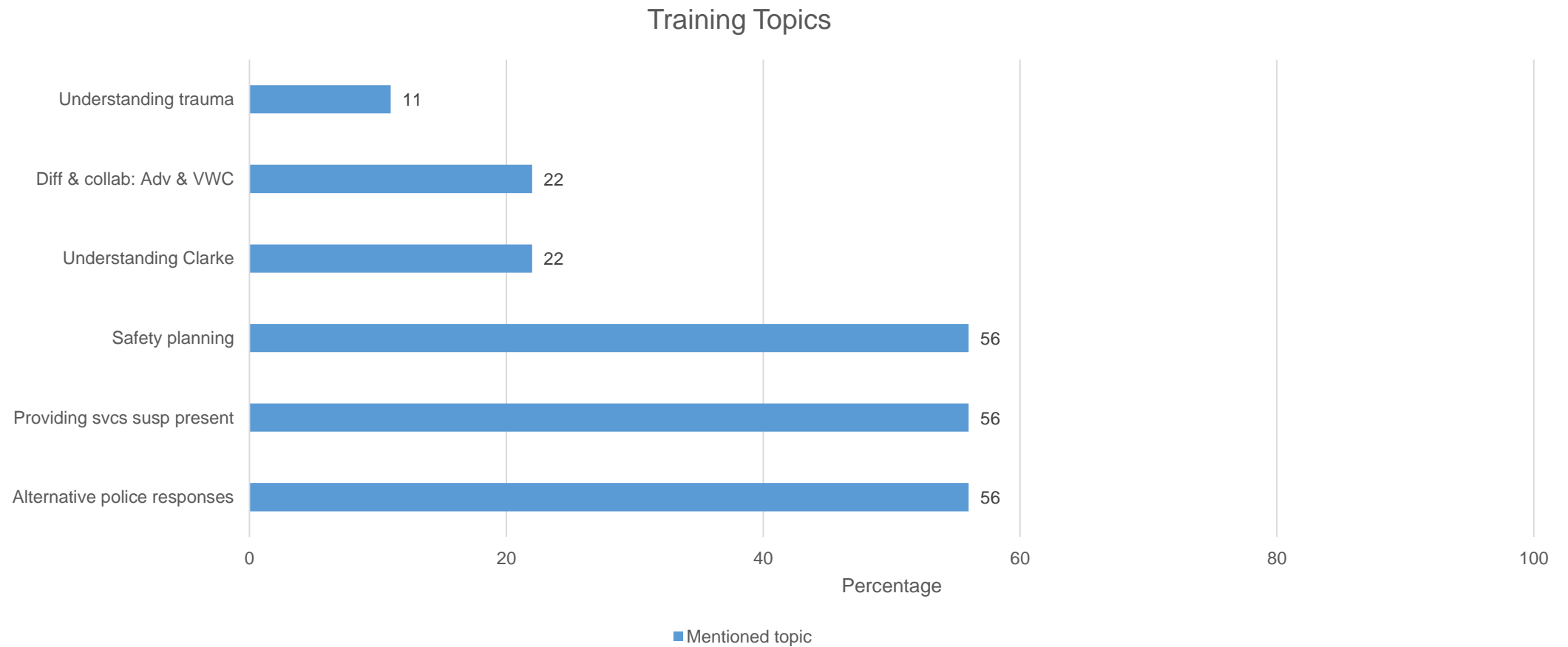
☐ Officers not providing resources to victims

☐ Not enough victim services staffing

☐ Lack/Not enough victim services resources

☐ Lack of coordination across agencies

Necessary victim services training



Recommendations likely needing legislation

Invest in community-based victim services statewide.

New resources in areas without victim services
Increase staffing, emergency housing, financial assistance,
counseling & legal assistance.

Invest in victim-witness units within policing agencies.

New units in jurisdictions without them
Increased staffing in existing units to allow for on scene response with
officer on DV calls

**Funding priority should be given to
community-based victim services when population numbers and/or
prevalence rates don't justify both victim-witness units
and community-based agencies.**

Invest in mandatory POST and CEU training on domestic violence

Invest in basic victim services trainings.

Twice a year

Held at different locations across the state

Establish coordinated community response teams or task forces in all counties.

Pass a constitutional amendment to reinstate the option of warrantless arrest for select crimes, based on their propensity for future physical harm.

Recommendations likely not needing legislation

Use of on-scene assessment tools that provide information on possible level of dangerousness and/or lethality should be considered standard practice across all policing agencies.

Mandate telephonic and electronic warrant availability across the state.

Institute a telephonic and electronic emergency civil protection order process for policing agencies.

A 24-hour window of appearance should be considered standard practice when citations are issued for domestic violence and/or other related crimes.

When domestic violence cases are referred to prosecutors for review, they should be triaged or prioritized to reduce delays in charging decisions.

As standard practice while on-scene, police should directly connect victims to victim services.

On-scene response by victim services.

On-scene response by victim services should be considered the standard practice of care when victims have contact with the criminal justice system.



2020 Biennial Reports

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